# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 12369 of 1994

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

==========

**MANILAL S PATEL - Petitioner(s)**

**Versus**

**KADI NAGARPALIKA & 1 - Respondent(s)**

==========

**Appearance :**

MR PRAKASH K JANI for the Petitioner,
MS TEJAL G DOSHI for Respondent No.1,
MS FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent No.s: 3 and 4.
MR SURESH M SHAH for Respondent No 5
MR AJ YAGNIK for Respondent No.6,
RULE SERVED for Respondent Nos. 2 and 7

==========

**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 08/02/2006**

**ORAL JUDGMENT**

1. This petition filed way back in the year 1994 involves certain important points especially for

residents of Kadi Town and other persons residing in the near vicinity.

2. The petition was filed with a prayer to change the existing place of Charmakund located on final plot No. 247 at any other place. The grievance made by the petitioner is that on final plot No. 247 of Kadi, members of the Chamar community are carrying on the activity of bringing the dead animals from Kadi Town and other nearby areas. They are separating skin of the dead animals and tanning the same on the said site. Leather and other parts of the bodies of the dead animals are being utilised for various purposes. It is the case of the petitioner that this activity is a health hazard to the residents of the Kadi Town and other residents of the nearby areas. It is the case of the petitioner that Kadi town has grown rapidly in last few decades and as a result of which the Charmakund which was earlier located on the outskirts of the town has now been engulfed by development and has become virtually part of the existing town. The process of bringing dead animals at a site which is now in the midst of thickly populated residential areas is causing nuisance. It is the contention of the petitioner that quite apart from the

stench that coming from the said place, the same is also a heath hazard to the residents of the town.

3. In so for as grievance of the petitioner is concerned, there can hardly be any dispute. It is stated before this Court that Charmakund has been in existence since more that 100 years now. Activity of dead animals and tanning the skin and separating it from parts of the dead body, etc. has been going on for over a century now. It is also not in dispute that the Charmakund which was earlier in the outskirts of the town is now surrounded by development which includes residential societies and other activities. The need to shift Charmakund therefore, was imminent. At the same time one cannot lose sight of the fact that the activity is being carried on by the community is of considerable importance to the people of the area for sanitation. Also Kadi town and the villages around have population of various milch and other animals. If systematic facility of quick disposal of such dead animals is not available, that itself would be a great health hazard and a serious cause for concern. Thus, the members of the Chamar community undoubtedly have been discharging an important duty which on account of social stigma, not many people even at present outside

the said community would be willing to undertake.

4. With this background in mind, this Court had heard learned Advocate Mr. P.K.Jani appearing on behalf of the petitioner, learned Assistant Government Pleader Ms. Falguni Patel appearing for the State Government, Learned Advocate Ms. Tejal Doshi appearing for Kadi Nagar Palika and Learned Advocate Mr. A.J.Yagnik representing Chamar Community. At the outset, I would like to record my appreciation for the cooperation given by all the learned Advocates to bring about a solution to this impasse in the best interest of all concerned. I must state on record that learned advocates adopted pragmatic and positive approach which enabled this Court to bring about solution which I find is in the best interest of all sides. Learned Advocate Mr. A.J.Yagnik extended full cooperation to the suggestions mooted by the Court that under proper formula Chamarkund needs to be shifted. On behalf of his clients, he had shown willingness for shifting of existing activities, if alternative site is provided. The Collector, Mehsana has also accorded full cooperation with prompt response and decisive action. I would be failing in my duty, if I did not appreciate his efforts also.

5. On 28.12.2005, this Court had after recording background of the case, requested the Collector Mehsana to hold joint meeting of the petitioner, representatives of respondent No.6 and 7 i.e. members of the Chamar Community and the Officers of the Kadi Nagar Palika. The Collector was requested to take decision with respect to alternative site which can be offered to the Chamar Community for the purpose of shifting of Charmkund. It was noted that earlier the Government had earmarked a plot out of Survey No. 1973 which is at a distance from the existing development of Kadi Town. However, this decision was for some reason never acted upon. The Collector was also requested to take into consideration the demand of the Chamar Community for assigning a larger area then one acre earlier proposed by the Government.

6. Ms. Patel, learned Assistant Government Pleader places on record a copy of the order dated 18.01.2006 passed by the Collector, Mehsana pursuant to meeting held by him on 12.01.2006. The request of Respondent Nos. 6 and 7 for grant of larger area out of Survey No. 1973 was straight away accepted. Instead of one acre, it is now decided to allot two acres out of said plot. The Collector has also provided for modality for construction

of wall around the said plot, to isolate the said area from future development. The Collector also directed the Chief Officer of Kadi Nagar Palika to take steps for providing water connection and for construction of wall around the site. The request of Respondent Nos. 6 and 7 for providing vehicles for carting dead animals was however, turned down. Upon passing of the said order, most of the issues concerning shifting of existing Charmkund have been resolved.

7. Mr. A.J.Yagnik, learned advocate however, raised few requests. He submitted that the existing approach road to access the plot alloted for new Charmkund is not in proper condition. The same is narrow and would not be possible to be used during monsoon. He further submitted that because of shifting of Charmkund dead animals would have to be carted to further distance for which purpose motorised vehicles would be essential. He thirdly, submitted that the Collector has passed no order with respect to the request made by Chamar Community for being granted atleast a portion of the plot of the existing Charmakund for their activities such as some memorial.

8. Ms. Patel, learned Assistant Government Pleader

submitted that the possession of the plot out of Survey No. 1973, as alloted to the members of the community was offered to them and the same will be handed over as soon as approach is made. The learned Assistant Government Pleader accepted the suggestion of the Court that proper road needs to be provided for approaching new plot. The learned Assistant Government Pleader submitted that the authorities will render full cooperation to ensure that Charmkund can be shifted.

8.1 Ms. Doshi, learned Advocate for the Municipality under the instructions stated that if an application for providing water connection is made, the same will may be granted expeditiously.

9. From the above situation, it would appear that by virtue of order dated 18.01.2006 passed by the Collector, Mehasana, new site for shifting Charmkund from the Kadi Town is available. Respondent Nos. 6 and 7 have already shown their willingness to shift; Of course, upon availability of certain basic facilities.

10. In view of this, following directions are issued:

(a) The Collector, Mehasana shall examine the request of Respondent Nos. 6 and 7 for providing access road to the plot in question. A sufficiently wide all weather road will be provided, if not existing. This shall be completed before the onset of monsoon.

(b) Upon application being made by the members of the Chamar Community, Kadi Nagar Palika shall supply water connection upon payment of the prescribed charges, if necessary, expeditiously.

(C ) For construction of wall, the Collector has already given directions, I do not find necessary to repeat the same.

(d) For the purchasing vehicles by Nagar Palika, it will be open for Respondent Nos. 6 and 7 to make representation to the Nagar Palika, which I am sure will be considered and disposed of in accordance with law.

(e) It will be open for Respondent Nos. 6 and 7 to make separate representation to the Collector,

Mehasana for allotting part of the existing plot being used as Charmakund to the members of Chamar Community. As stated in the order dated 28.12.2005, it is solely within the discretion of the Collector to consider such request. Consideration, acceptance or rejection is not precondition to shifting of Charmkund.

(f) Mr. Nareshbhai Patel, Chief Officer of the Kadi Municipal Corporation, under instructions stated that upon application being made by Respondent Nos. 6 and 7 for supplying water connection, the same shall be supplied urgently. Upon availability of water connection at a new site, Respondent Nos. 6 and 7 and other members of the Chamar Community will stop using existing Charmkund for their activities and they will shift their activities at the new site on plot bearing survey No. 1973 now alloted to them by the Government.

(g) If there is need for levelling of the plot, the same will be done by the Municipality urgently.

(h) The Collector in order dated 18.01.2006 has already made observations, which would enable Respondent Nos. 6 and 7 to get electricity connection expeditiously. The Nagar Palika has also assured this Court to facilitate this process.

(i) In case of difficulty in working out this formula, it will be open for the parties to approach the Collector, Mehasana for redressal of the grievances.

11. With these directions, the petition is disposed of. Rule made absolute to aforesaid extent. No order as to costs.

***[Akil Kureshi, J.]***

satishcv